



# Special Notice

WASHINGTON STATE DEPARTMENT OF REVENUE

MAY 28, 2010

## New “Economic Nexus” in Washington State May Impact Franchisors

### Background

Effective June 1, 2010, Washington State’s new economic nexus standard goes into effect. The economic nexus standard may be met without a physical presence in Washington. Under the new economic nexus standard, franchise fees, royalty income, and other income from Washington, could become subject to Washington’s business and occupation (B&O) tax on an apportioned basis.

### New legislation

Second Engrossed Substitute Senate Bill 6143, Chapter 23 Laws of 2010 (Section 101), establishes that businesses are no longer required to have a physical presence in Washington to have nexus. Businesses meeting the new economic nexus standard (described below) are required to obtain a Washington tax registration and begin paying Washington’s Business & Occupation tax (B&O) on their income apportioned to Washington State.

### Economic nexus taxable thresholds

Under this new standard, a franchisor has nexus with Washington State if in a tax year it has at least one of the following in Washington State:

- It is commercially domiciled in Washington;
- Property – average value exceeding \$50,000,
- Payroll exceeding \$50,000 (including certain third party costs),
- Sales exceeding \$250,000, or
- At least 25% of its worldwide property, payroll, or sales.

**Note:** For purposes of calculating the property, payroll, and sales thresholds for the 2010 tax year, the entire 2010 calendar year is to be used. Starting June 1, 2010, a business will incur B&O tax only if it establishes nexus with Washington under the new economic nexus standards in 2ESSB 6143. For example, Taxpayer X is an out-of-state business with no physical presence in Washington. In 2010, Taxpayer X has \$100,000 of Washington sales in May, \$100,000 in June, and \$100,000 in July. Taxpayer X establishes nexus with Washington by exceeding the \$250,000 sales threshold and will owe B&O tax only on its Washington sales after June 1, 2010.

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## **“Trailing” nexus**

Once nexus has been established, it will continue:

- As long as the taxpayer continues to meet at least one of the thresholds; and
- For one year after the year in which the taxpayer no longer meets one of the thresholds.

## **Registering in Washington**

Businesses that have nexus under the new standard can obtain a Washington tax registration number and begin reporting B&O tax by visiting our website at **[dor.wa.gov/EconomicNexus](http://dor.wa.gov/EconomicNexus)**.

## **Definitions**

**Property** - real property, personal property, loan and credit card receivables, rented property, intangible property, and receivables. It does not include computer software, digital goods, or digital codes. The average value of property is determined by averaging the value of property on January 1 and on December 31.

**Payroll** - compensation paid to employees and third party representatives providing services in Washington.

**Sales** - interest, fees, gains from trading securities, dividends, commissions, royalties, and other income. Note: Generally, royalty income is considered to be from Washington if the intangible is used in Washington. Complete information on sourcing of apportionable income will be provided in the apportionment methodology publications.

## **New apportionment methodology**

This legislation also provides for a new single factor apportionment methodology based on sales. The new apportionment calculation will be discussed in detail in upcoming Department rules and/or other publications that will be available on the Washington Department of Revenue’s website at **[dor.wa.gov/EconomicNexus](http://dor.wa.gov/EconomicNexus)**. We advise you to join our listserv to be apprised of updated information.

## **For more information**

Visit the Department’s website at **[dor.wa.gov/EconomicNexus](http://dor.wa.gov/EconomicNexus)** or contact the Department’s Telephone Information Center at 1-800-647-7706.